A

MKI ENGINEERING SERVICES (SARAWAK) SDN BHD v. PETROLIAM NASIONAL BHD (PETRONAS) & ANOTHER CASE

HIGH COURT SABAH & SARAWAK, MIRI
DEAN WAYNE DALY J
B [SUIT NOS: MYY-22NCvC-9-5-2018
& MYY-22NCvC-10-5-2018 (HC)]
21 JUNE 2024

C **Abstract** – *A company that embarks on businesses related to petroleum in Malaysia is required to obtain a license under the Petroleum Development Act 1974 and the Petroleum Regulations 1974. Any non-compliance of the license would be subject to statutory punishment. In this case, the company, as a license holder issued by Petroliam Nasional Berhad ('PETRONAS'), is deemed to have committed a* D *fundamental breach of the PETRONAS license's general and special conditions by virtue of its association and/or relationship with blacklisted companies. Thus, PETRONAS's act of blacklisting the company and its directors did not amount to a fundamental breach of the license. Since PETRONAS's action of blacklisting the directors of the* E *company is well-founded, a letter published stating as such is done so on an occasion of qualified privilege, and are fair comments and justified.*

F ***CONTRACT:*** *Breach – Allegation of – Company holder of license issued by PETRONAS – Whether company breached PETRONAS license's general and special conditions and other applicable regulations and laws – Decision to blacklist company and its directors – Whether unlawful, wrongful and unjustified – Whether license established contractual relationship between company and PETRONAS – Whether PETRONAS act of blacklisting company amounted to fundamental breach – Whether PETRONAS intentionally and wrongfully interfered with company's* G *business – Whether company could claim for damages – Petroleum Development Act 1974 – Petroleum Regulations 1974*

TORT: *Defamation – Allegation of – Company holder of license issued by PETRONAS – Impugned letter by PETRONAS stating company and its directors* H *blacklisted –Whether action of blacklisting company justifiable and well founded – Whether publication of impugned letter on occasion of qualified privilege – Whether justified and constituted fair comment*

I The plaintiff, MKI Engineering Sdn Bhd ('MKI'), was the holder of the license issued by the defendant, Petroliam Nasional Berhad ('PETRONAS'), to supply product/service to exploration and oil/gas companies in Malaysia. The said license was subject to the conditions stated in the said license ('PETRONAS license') The plaintiff contended that it had been awarded three contracts to provide services including the provision for the

maintenance and repair of valves by PETRONAS Carigali Sdn Bhd ('PETRONAS Carigali contract'). The defendant notified the plaintiff of its decision to blacklist the plaintiff and its directors on the ground of its association with Mikuni (M) Sdn Bhd, a blacklisted company. Upon demand by PETRONAS Carigali, the plaintiff had to return 144 valves which had been given for maintenance and repairs under the ongoing PETRONAS Carigali contract. The plaintiff commenced an action against the defendant ('first suit') while the directors of the plaintiff commenced another action against the defendant ('second suit'). In respect of the first suit, the issues that arose were: (i) whether the defendant's decision of blacklisting the plaintiff and its directors and declaring that they shall 'no longer qualify and/or shall no longer be allowed to apply for license/registration with PETRONAS (including its subsidiaries) and Petroleum Arrangement Contractors (PACs) tenders' was unlawful or wrongful or unjustified; (ii) whether the plaintiff was in fundamental breach of the PETRONAS license's general and special conditions and any other conditions set out in the PETRONAS License and General Guidelines and other applicable regulations and laws; (iii) whether PETRONAS decision amounted to a fundamental breach of the PETRONAS license; (iv) whether PETRONAS had intentionally and wrongfully interfered with the plaintiff's business or trade by committing the tort of inducing the parties with whom the plaintiff had entered into contracts to break their respective contracts or to whom it had submitted the tenders and requests for quotations to abort any contractual arrangements or to cease to deal with the plaintiff; (v) whether PETRONAS had the absolute discretion to blacklist/suspend/revoke any license holder as it deemed fit and proper if the circumstances arose to protect its interest, public and the industry; and (vi) whether the plaintiff was entitled to claim for special damages, general damages and aggravated damages. As for the second suit, the first and second plaintiffs' claim arose from the decision by PETRONAS to blacklist MKI and the plaintiffs being the board of directors. The issues that arose were: (i) whether the words complained of in the letter dated 6 October 2017 were defamatory; (ii) whether there was publication of the defamatory material to third parties as alleged; (iii) whether the publications by PETRONAS were on occasion of qualified privilege and/or were fair comments and/or justified; and (iv) whether the first and second plaintiffs were entitled to claim for damages.

Held (dismissing plaintiffs' claim in first suit and second suit):

(1) The Petroleum Development Act 1974 ('PDA') is the governing law regulating the exploration and exploitation of petroleum whether onshore or offshore including any related activities and development. The Petroleum Regulations 1974 ('PR') was then formulated pursuant to the discretionary power granted in the PDA. The PR requires any person who wishes, among others, to commence or continue any

business or service involving the supply of equipment and facilities and services required in connection with the exploration, exploitation, winning and obtaining of petroleum including provision of engineering, technical and consultancy services involved in exploration, drilling and production of crude oil and natural gas and delivery of engineering, construction and maintenance works connected with upstream activities to obtain a license from PETRONAS. (para 24)

(2) No individual or entity may conduct such business except under, and in full compliance with, a valid license issued under the PR. Any violation of PR, including non-compliance with the terms and conditions of a license, permission, or approval, is subject to penalties, which may include a fine of up to RM100,000, imprisonment for a term not exceeding five years, or both. Accordingly, the PETRONAS license, as mandated by the PDA and PR, was a legal requirement for any party intending to engage in petroleum-related businesses in Malaysia. (para 25)

(3) As MKI's scope of businesses include supplying and maintaining the mechanical valve and safety valves, there was no doubt that these businesses fell within the ambit of the above provision under the PR. Consequently, the license obtained by the MKI from PETRONAS was a statutory requirement, and any non-compliance may result in legal penalties as prescribed by law. There was no liberty of contracting parties with PETRONAS to pick and choose their duties and obligations. Likewise, by virtue of the PETRONAS license granted to MKI, there was no room for MKI to pick and choose their duties and obligations. As such, the said license did not establish a contractual relationship between the MKI and PETRONAS. Therefore, MKI's cause of action for breach of contract ought to fail. (paras 26-30)

(4) There was indeed a relationship between MKI and Mikuni (M) Sdn Bhd, which was one of the blacklisted companies. This could be seen by virtue of the role played by Yong Khiam Keat ('KK Yong') and Mikuni in the affairs of the MKI by virtue of registering KK Yong as director of MKI, cross posting directors in MVI and the MKI and allegation of pre-planned withdrawal of MKI investment in MVI, proven by way of testimonies from the witnesses and contemporaneous evidences produced. As such, the defendant had successfully demonstrated that there was indeed a relationship between MKI and Mikuni. MKI was deemed to have committed a fundamental breach of the PETRONAS License General and Special Conditions by virtue of its association and/or relationship with blacklisted companies. MKI was considered to have been engaging in 'inappropriate activities with this license' which was prohibited under condition 10.k of the PETRONAS License General

Conditions read together with condition 14 of the PETRONAS license. Since it was established that MKI was in fundamental breach of the PETRONAS License General Conditions, PETRONAS's act of blacklisting MKI and its directors did not amount to a fundamental breach of PETRONAS license on the part of PETRONAS. (paras 34-43)

(5) The pre-requisite to prove a tort of wrongful interference was for the victim to prove the existence of unlawful actionable interference. Since the decision of PETRONAS to blacklist MKI was justifiable and well-founded, the pre-requisite of unlawful actionable interference did not arise. Therefore, MKI had failed to establish that PETRONAS had intentionally and wrongfully interfered with MKI's business. (paras 48-50)

(6) The power of PETRONAS to revoke, suspend or blacklist was not absolute and therefore, subject to a breach or non-fulfillment of the stated conditions by the holder of the license. The general and special conditions of the PETRONAS License and the Registration General Guidelines shall be binding on PETRONAS as much as it bound the licensee. PETRONAS is a statutory corporation established under the PDA. As such, the doctrine of *ultra vires* shall apply to PETRONAS as well in a liberal manner. PETRONAS must only act within its expressed and implied authority and any other act that is reasonably incidental to the doing of those acts. Be that as it may, PETRONAS had not committed a fundamental breach of its license herein. Thus, MKI was not entitled to claim for special damages, general damages and aggravated damages. (paras 55- 59)

(7) Since PETRONAS's action of blacklisting the first and second plaintiffs were justifiable and well-founded, the words complained of as defamatory in the said letter were published on an occasion of qualified privilege, were fair comments and justified. It was part of PETRONAS' responsibility, as industry regulator under the PDA and PR, to protect the oil and gas industry in Malaysia. It was imperative for PETRONAS to give priority to the safety of the equipment in the oil and gas industry. PETRONAS had shown that threats against safety was a matter concerning public interest. As such, PETRONAS' act of notifying the affected principals of MKI and PAC on the status of MKI following its blacklisting decision was justified, constituted fair comments and qualified privilege. Thus, the first and second plaintiffs in the second suit were not entitled to claim for damages as prayed. (paras 78-80)

Case(s) referred to:

Abdullah Mamat & Anor v. Pengarah Hutan Negeri Trengganu & Anor [1982] CLJ 159A; [1982] CLJ (Rep) 379 HC ***(refd)***

Ayer Hitam Tin Dredging Malaysia Bhd v. YC Chin Enterprises Sdn Bhd [1994] 3 CLJ 133 SC ***(refd)***

CIMB Bank Bhd v. Anthony Lawrence Bourke & Anor [2019] 2 CLJ 1 FC ***(refd)***

Dato' Dr Low Bin Tick v. Datuk Chong Tho Chin & Other Appeals [2017] 8 CLJ 369 FC ***(refd)***

Dato' Seri Mohammad Nizar Jamaluddin v. Sistem Televisyen Malaysia Bhd & Anor [2014] 3 CLJ 560 CA ***(refd)***

Majlis Perubatan Malaysia & Anor v. Asia Pacific Higher Learning Sdn Bhd [2022] 9 CLJ 177 CA ***(refd)***

Penang Development Corporation v. Teoh Eng Huat & Anor [1993] 2 CLJ 283 SC ***(refd)***

Phiong Khon v. Chonh Chai Fah [1970] CLJU 102; [1970] 1 LNS 102 FC ***(refd)***

Tan Sri Dr Muhammad Shafee Abdullah v. Tommy Thomas & Ors [2018] 10 CLJ 222 CA ***(refd)***

Wong Swee Chin v. PP [1980] CLJU 138 [1980] 1 LNS 138 FC ***(refd)***

Legislation referred to:

Petroleum Development Act 1974, ss. 3(1), 7

Petroleum Regulations 1974, regs. 3, 5

For the plaintiffs (1st & 2nd suits) - Mekanda Singh Sandhu & Kalveet Singh Sandhu; M/s Sandhu & Company

For the defendant - Wejok Tomik & Silas Ling Chia Yu; M/s Gala and Tomik Advocs

Reported by Suhainah Wahiduddin

JUDGMENT

Dean Wayne Daly J:

Introduction

[1] The plaintiff, MKI Engineering Sdn Bhd was at all material times the holder of the license issued by the defendant, PETRONAS to supply product/service to exploration and oil/gas companies in Malaysia. The said license was supposed to be valid from 20 October 2015 to 20 October 2018 subject to the conditions stated in the said license ('the PETRONAS license').

[2] The plaintiff contended that it had been awarded three contracts to provide services including the provision for the maintenance and repair of valves by PETRONAS Carigali Sdn Bhd ('the PETRONAS Carigali Contract').

[3] The defendant *via* a letter dated 6 October 2017 had notified the plaintiff of its decision to blacklist the plaintiff and its directors on the grounds of its association with Mikuni (M) Sdn Bhd, a blacklisted company effective from the date of the letter.

[4] Upon demand made by PETRONAS Carigali, the plaintiff had to return 144 valves which had been given for maintenance and repairs under the ongoing PETRONAS Carigali Contract.

[5] The plaintiff had commenced an action against the defendant *vide* civil suit No. MYY-22NCvC-9/5-2018 ('first suit') while the directors of the plaintiff have commenced another action against the defendant *via* civil suit No. MYY-22NCvC-10/5-2018 ('second suit').

[6] It ought to be noted that the third plaintiff in the second suit had later withdrawn his claim against the defendant on 6 February 2023. The application was granted by the court with costs of RM3,000 to the defendant.

[7] The plaintiff had called three witnesses to give evidence at the trial, namely, Pui Shak Lin (PW1), Mahmud bin Matusin (PW2) and Sim Aik Chiam (PW3). Meanwhile, the defendant had called three witnesses namely Shahrul Fitri bin Ab Hadi (DW1), Wan Yusoff bin A Hamid (DW2) and Syafiq Mahayudin (DW3).

[8] This court had duly considered submissions of learned counsel in light of the cause papers filed and the evidence adduced herein.

First Suit

[9] In respect of the first suit, there are seven issues to be tried.

[10] The first issue is whether the defendant's decision of blacklisting the plaintiff and its directors and declaring that they shall "no longer qualify and/or shall no longer be allowed to apply for license/registration with PETRONAS (including its subsidiaries) and Petroleum arrangement contractors (PACs) tenders" *vide* its letter dated 6 October 2017 was/is unlawful or wrongful or unjustified.

[11] Since the cause of action in respect of this first issue rests on the alleged breach of contract, it is pertinent for this court to first examine whether there was a contractual relationship between the plaintiff and the defendant.

[12] In regard to that, this court found that any person who intends to embark on businesses related to petroleum in Malaysia, is required under the law to obtain PETRONAS license that is under Petroleum Development Act ("PDA 1974") and Petroleum Regulations ('PR 1974').

[13] There was no doubt that the MKI's business fell within the ambit of the provisions under PR 1974. The license obtained by MKI from PETRONAS was required by statute and issued pursuant to the power delegated to PETRONAS under s. 7 of the PDA 1974 and reg. 5 of the PR 1974. Therefore, any non-compliance of the license would be subject to statutory punishment.

[14] The laws and regulations governing the issuance of the PETRONAS license must be first scrutinised. It ought to be noted that pursuant to the PDA 1974, PETRONAS is a statutory corporation as clearly provided in the long title and s. 3(1) of the PDA as follows:

> An Act to provide for exploration and exploitation of petroleum whether onshore or offshore by a **Corporation** in which will be vested the entire ownership in and the exclusive rights, powers, liberties and privileges in respect of the said petroleum, and to control the carrying on of downstream activities and development relating to petroleum and its products; to provide for the establishment of a Corporation under the Companies Act 1965 [Act 125] or under the law relating to the incorporation of companies and for the powers of that Corporation; and to provide for matters connected therewith or incidental thereto
>
> ...
>
> **3. The Corporation**
>
> (1) Notwithstanding section 22 of the Companies Act 1965, relating to the names of companies, the **Corporation shall be styled as the Petroleum Nasional Berhad or in short form PETRONAS**.
>
> (emphasis added)

[15] At this juncture, it is imperative to reproduce s. 7 of the PDA 1974. It reads:

> 7. Power to make regulations
>
> The Prime Minister may make regulations for the purpose of carrying into effect the provisions of this Act and, without prejudice to the generality of the foregoing, such regulations may, in particular, provide for-
>
> (a) the conduct of or the carrying on of:
>
> (i) any business or service relating to the exploration, exploitation, winning or obtaining of petroleum;
>
> (ii) any business involving the manufacture and supply of equipment used in the petroleum industry;
>
> (iii) downstream activities and development relating to petroleum;
>
> (b) the marketing and distribution of petroleum and its products;
>
> (c) penalties in the form of a fine not exceeding one hundred thousand ringgit or imprisonment not exceeding five years or both for breach of any of the regulations and for non-compliance with any term or condition of any licence, permission or approval issued or granted under the regulations;
>
> (d) the forfeiture of anything used or intended to be used in the commission of any such breach or non-compliance.

[16] Exercising the authority granted under the aforementioned provision, the Prime Minister established the PR 1974. This regulation empowers PETRONAS with regulatory oversight, including the authority to grant

permissions and licenses for activities governed by both the PDA 1974 and PR 1974. Additionally, PETRONAS is entrusted with the ability to impose necessary terms and conditions within these licenses to effectively regulate and oversee the development of all upstream activities.

[17] These can be found in regs. 3 and 5 of the PR 1974 which read as follows:

> 3. Applications made to PETRONAS
>
> The following applications for a licence shall be made to the President of PETRONAS:
>
> (a) a licence to commence or continue any business or service, onshore or offshore relating to the exploration, exploitation, winning and obtaining of petroleum and, in particular involving the supply and use of rigs, derricks, ocean tankers and barges;
>
> (b) a licence to commence or continue any business or service involving the supply of equipment and facilities and services required in connection with the exploration, exploitation, winning and obtaining of petroleum including the following:
>
> (i) survey and exploration services;
>
> (ii) all engineering, technical and consultancy services involved in exploration, drilling and production of crude oil and natural gas;
>
> (iii) all engineering, construction and maintenance works connected with upstream activities;
>
> (iv) rigs and drilling services;
>
> (v) supplies of all exploration, drilling and production materials, equipments, platforms, derricks, tools and installations, pipe and pipe-laying services, barges and tankers;
>
> (iv) supply of general services connected with upstream operations.
>
> ...
>
> 5. Approval and conditions
>
> (1) The Chairman and Chief Executive of PETRONAS shall process applications made to them under regulation 3 and shall thereafter forward them to the Prime Minister who shall reject or approve such applications.
>
> (1A) The Secretary-General, Ministry of International Trade and Industry and the Secretary General, Ministry of Internal Trade and Consumer Affairs shall process applications made to them under regulations 3A(1) and (2), as the case may be and shall thereafter forward them to the Prime Minister who shall reject or approve such applications.
>
> (1AA) Permission and licences granted in pursuance of the applications made under sub-regulations (1) and (IA) shall be subject to the payment of fees as specified in the Schedule hereto.

(2) In approving any regulation for a licence or permission under regulation 3 or regulation 3A the Prime Minister or any such person to whom such powers have been delegated by him may impose such terms and conditions as he may deem fit.

(3) Without prejudice to the generality of the foregoing the said conditions may relate to any of the following:

(i) royalties, bonuses, levies or other such payments;

(ii) fees as specified in the Schedule hereto;

(iii) work and investment programme;

(iv) method of working;

(v) inspection of worksite and plant;

(vi) employment and training;

(vii) report of discovery and production of petroleum;

(viii) submission of all data, information and records connected in any survey or research;

(ix) volume of production;

(x) quality;

(xi) fixing of prices;

(xii) keeping and inspection of records including books of account;

(xiii) distribution, marketing, including the appointment of retailers, and export;(xiv) purchase of petroleum, petroleum products and petrochemical products from overseas or locally;

(xv) option to purchase petroleum; and

(xvi) right of preemption.

[18] By virtue of the aforementioned provisions, it is evident that the PETRONAS license granted to MKI is ultimately governed by the PDA 1974 and the PR 1974.

[19] It ought to be noted that MKI's claim for breach of contract is based on the assertion that the PETRONAS license constitutes a contractual agreement between PETRONAS and MKI.

[20] Therefore, it is incumbent on this court to carefully examine whether PETRONAS and MKI intended to establish a legally binding relationship through the issuance of the PETRONAS license.

[21] While there is nothing specific provided under the Contracts Act 1950 (CA 1950) on the requirement and determination of parties' intention to create legal relation, Malaysian courts on multiple occasions have adopted common law position that a contract cannot come into existence without the intention for the parties to be legally bound by the same (see *Phiong Khon v. Chonh Chai Fah* [1970] CLJU 102; [1970] 1 LNS 102; [1970] 2 MLJ 114, FC).

[22] The Supreme Court in *Ayer Hitam Tin Dredging Malaysia Bhd v. YC Chin Enterprises Sdn Bhd* [1994] 3 CLJ 133; [1994] 2 MLJ 754 elucidates as follows: A

> In other words, in its task of ascertaining the intention of the parties, the court will, generally speaking, apply an objective test; more particularly, it will ask itself, **what would the intention of reasonable men be if they were in the shoes of the parties to the alleged contract**. B
>
> (emphasis added)

[23] The case of *Abdullah Mamat & Anor v. Pengarah Hutan Negeri Trengganu & Anor* [1982] CLJ 159A; [1982] CLJ (Rep) 379; [1982] 1 MLJ 342 in dealing on the issue of statutory licenses issued by the State Government held that: C

> It must be reminded that constitutionally, forestry and forests are state matters in the same way as land, and are thus governed by the relevant state forest enactment. In so far as Trengganu is concerned, the law regulating forestry and forests is the Forest Enactment No. 44 of 1356 passed on November 3, 1937 and the Forest Rules 1356. *Under this legislation, no one can cut collect or remove any timber except under and in accordance with the conditions of a licence. There are three types of logging licences.* The first type referred to as Form I licence is an authority "to take forest produce on ledge account." The second type is a licence to take a fixed quantity of forest produce on pre-payments of royalty. This is known as Form II. The third type of licence is referred to as Form III and this licence authorises its holder to take forest produce other than timber on payment of a monthly fee. In practice a Form I licence is invariably issued. Indeed the licence to be issued to the plaintiffs was Form I licence. D E
>
> Anyone who takes forest produce without a licence or contrary to a condition of the licence is guilty of an offence punishable under section 28 of the Enactment. *The licence is thus the requirement of the law and not really a matter of free choice by both parties as a contract is.* When the plaintiffs were applying for a logging area, they were in fact applying for a licence to take away available timber in the area applied for, and when the defendant No. (1) wrote a letter stating that the application was approved he was in fact informing the plaintiffs that a Form I licence to carry out logging in the applied area had been approved in principle and that the requisite licence would be issued to them as a matter of course after they had paid all the required fees and contacting the relevant District Forest Officer. In my view *under no circumstances the application for the licence and its approval could be held to have created contractual rights and obligations between the applicant and the licensing authority*. F G H
>
> (emphasis added)

[24] In the present case, PDA 1974 is the governing law regulating the exploration and exploitation of petroleum whether onshore or offshore including any related activities and development. PR 1974 was then formulated pursuant to the discretionary power granted in PDA 1974. PR I

1974 requires any person who wishes, among others, to commence or continue any business or service involving the supply of equipment and facilities and services required in connection with the exploration, exploitation, winning and obtaining of petroleum including provision of engineering, technical and consultancy services involved in exploration, drilling and production of crude oil and natural gas and delivery of engineering, construction and maintenance works connected with upstream activities to obtain a license from PETRONAS.

[25] No individual or entity may conduct such business except under, and in full compliance with, a valid license issued under PR 1974. Any violation of PR 1974, including non-compliance with the terms and conditions of a license, permission, or approval, is subject to penalties, which may include a fine of up to RM100,000, imprisonment for a term not exceeding five years, or both. Accordingly, the PETRONAS license, as mandated by the PDA 1974 and PR 1974, is a legal requirement for any party intending to engage in petroleum-related businesses in Malaysia.

[26] As MKI's scope of businesses include supplying and maintaining the mechanical valve and safety valves, there is no doubt that these businesses fall within the ambit of above provision under PR 1974. Consequently, the license obtained by MKI from PETRONAS is a statutory requirement, and any non-compliance may result in legal penalties as prescribed by law.

[27] In fact, PW2 admitted that operating MKI's business without a valid license is an offence punishable under the law. In his cross-examination, he testified that:

> Q: Was there any termination letter pertaining to the contract issued by PETRONAS Carigali to MKI?
>
> A: No. Once blacklisted, the PETRONAS licence is suspended. MKI and its directors have to stop work. It is a crime to continue any business or provide any services without the licence.
>
> I first refer to the letter of award of PETRONAS Carigali contract in Part A Bundle enclosure 164 (exhibit P2) page 3 clause 8.1.: "... contractor is required to have a valid license throughout the duration of the CONTRACT".
>
> I next refer to the PETRONAS Licence General Condition at page 4 of Part A Bundle enclosure 111 (Exhibit P1), "Condition 11" which says, anyone doing business without a licence is committing a crime which is punishable with a fine of up to RM50,000.00 or maximum of 2 years jail or both."

[28] In his re-examination, PW2 again testified as follows:

> Q: In cross-examination it was put to you:
>
> Q: I put it to you that you do not have any evidence to show that MKI and its directors were not allowed to continue with existing contracts as a result of the said blacklisting. Agree or disagree?

And you answered:

A: I disagree.

Why did you disagree?

A: As I have said earlier, once MKI had been blacklisted, its PETRONAS license is suspended. MKI and its directors had to stop work. It is an offence to continue doing business and provide services without a license. That's all.

[29] The Federal Court's decision of *CIMB Bank Bhd v. Anthony Lawrence Bourke & Anor* [2019] 2 CLJ 1; [2019] 2 MLJ 1 had recognised the principle of freedom of contract. It held, *inter alia*, that:

> [27] *The law recognises the principle of freedom of contract. Parties to a contract are free to determine for themselves what their obligations are*. As Sir George Jassel MR said in *Printing and Numerical Registering Company v. Sampson* [1875] LR 19 Eq 462 at p 465:
>
> > ... men of full age and competent understanding shall have the utmost liberty of contracting, and that *their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by Courts of Justice*. Therefore, you have this paramount public policy to consider – that you are not lightly to interfere with this freedom of contract.
> >
> > (emphasis added)

[30] It could be observed that there is no liberty for contracting parties with PETRONAS to pick and choose their duties and obligations. Likewise, by virtue of the PETRONAS license granted to MKI, there was no room for MKI to pick and choose their duties and obligations. As such, the said license did not establish a contractual relationship between MKI and PETRONAS.

[31] This court was of the opinion that MKI and PETRONAS have no contractual relationship. Therefore, MKI's cause of action for breach of contract ought to fail.

[32] The first issue to be tried ought to be answered in negative.

[33] The second issue is whether MKI was in fundamental breach of PETRONAS license general and special conditions and any other conditions set out in the PETRONAS license and general guidelines and other applicable regulations and laws.

[34] In respect of this issue, this court found that there was indeed a relationship between MKI and Mikuni (M) Sdn Bhd which is one of the blacklisted companies.

[35] This can be seen by virtue of the role played by Yong Khiam Keat (KK Yong) and Mikuni (M) Sdn Bhd in the affairs of the MKI by virtue of registering KK Yong's name as director of MKI, cross-posting directors in MVI and the MKI, and the allegation of pre-planned withdrawal of MKI investment in MVI which was proven by way of testimonies from the

witnesses and contemporaneous evidences produced. As such, the defendant had successfully demonstrated that there was indeed a relationship between MKI and Mikuni (M) Sdn Bhd which is one of the blacklisted companies.

[36] It had also been established on the balance of probabilities that KK Yong, Mohd Najib bin Ahmed @ Ahmad and Mahmud and MKI were the shareholders of MVI. MKI was the majority shareholder of MVI holding 3,5000,000 ordinary shares at the material time. KK Yong, Mohd Najib bin Ahmed @ Ahmad and Mahmud bin Matusin were the directors of MVI.

[37] Furthermore, it has been proven that MKI's representative participated in internal meetings and was included in internal email communications. In these correspondences, MIKUNI-associated companies, including MKI, were instructed to submit a sales quotation summary to Daisy Ong, the group CEO of the M Group, with CK Yong copied in the email (see cross-examination of DW3 in the notes of proceeding dated 9 January 2024 at pp. 600 to 601).

[38] Therefore, PETRONAS' finding that MKI is one of the alleged six associated companies of Mikuni (M) Sdn Bhd which were controlled by or under the instructions of Yong Chun Khiong (CK Yong) being the Group President is well-founded.

[39] That being said, MKI was deemed to have committed a fundamental breach of PETRONAS license general and special conditions by virtue of its association and/or relationship with blacklisted companies.

[40] MKI was considered to have been engaging in "impropriate activities with this license" which is prohibited under condition 10.k of the PETRONAS License General Conditions read together with condition 14 of the PETRONAS License.

[41] Therefore, this issue is answered in affirmative.

[42] The third issue is whether the PETRONAS' said decision amounted to a fundamental breach of the PETRONAS license as described in para. 7 of amended statement of claim.

[43] In respect of this issue, since it was established that the MKI was in fundamental breach of PETRONAS license general conditions, this court was of the opinion that PETRONAS' act of blacklisting MKI and its directors did not amount to a fundamental breach of PETRONAS License on the part of the PETRONAS.

[44] This issue is answered in negative.

[45] The fourth issue is whether, by the said decision, PETRONAS had intentionally and wrongfully interfered with MKI's business or trade by committing the tort of inducing the parties with whom MKI had entered into

contracts to break their respective contracts or to whom it had submitted the tenders and requests for quotations to abort any contractual arrangements or to cease to deal with the MKI.

[46] MKI further claimed that it was tendered for and was awarded the three contracts, which included the PETRONAS Carigali contract, valid from 4 January 2017 to 3 January 2020 with an option for renewal for one year, subject to the terms and conditions of the respective contracts. Further, it was submitted from DW2 testimony in relation to the issuance of the letters to "12 affected principles to inform that PETRONAS no longer has relationship with all Mikuni associated companies as they are no longer licensed with PETRONAS in view of their breach" and two-memorandum dated 2 November 2017 issued to relevant PACs indicates that the PETRONAS was aware of the parties with whom the plaintiff contracted with.

[47] Therefore, it was argued that PETRONAS had committed tort of unlawful interference by preventing MKI from continuing to perform the PETRONAS Carigali contracts and other contracts and/or deals with other companies related to oil and gas.

[48] It is trite that the pre-requisite to prove a tort of wrongful interference is for the victim to prove the existence of unlawful actionable interference.

[49] Since the decision of PETRONAS to blacklist MKI was justifiable and well-founded, this court was of the opinion that the pre-requisite of unlawful actionable interference did not arise.

[50] Therefore, MKI has failed to establish that PETRONAS had intentionally and wrongfully interfered with MKI's business.

[51] This issue is therefore answered in negative.

[52] The fifth issue is whether PETRONAS acted negligently and/or in breach of duty of care in blacklisting the plaintiff and its directors.

[53] As MKI had abandoned its claim on the cause of action of negligence and breach of duty, it is rendered redundant.

[54] The sixth issue is whether PETRONAS had the absolute discretion to blacklist/suspend/revoke any license holder as it deems fit and proper in the circumstances arises to protect its interest, public and the industry.

[55] In regard to this issue, this court was of the opinion that the power of PETRONAS to revoke, suspend or blacklist is not absolute and therefore, subject to breach or non-fulfilment of the stated conditions by the holder of the license. The general and special conditions of the PETRONAS License and the Registration General Guidelines shall be binding on PETRONAS as much as it binds the licensee (see *Majlis Perubatan Malaysia & Anor v. Asia Pacific Higher Learning Sdn Bhd* [2022] 9 CLJ 177; [2022] 6 MLJ 529).

[56] As mentioned earlier, PETRONAS is a statutory corporation established under PDA 1974. As such, the doctrine of *ultra vires* shall apply to PETRONAS as well in a liberal manner. (See *Penang Development Corporation v. Teoh Eng Huat & Anor* [1993] 2 CLJ 283; [1993] 2 MLJ 97).

[57] PETRONAS must only act within its expressed and implied authority and any other act that is reasonably incidental to the doing those acts.

[58] Be that as it may, since it was found that PETRONAS had not committed fundamental breach of its license as aforesaid, the answer to this issue is inconsequential.

[59] The seventh issue in the first suit is whether MKI is entitled to claim for special damages, general damages and aggravated damages to be assessed by the Deputy Registrar together with interest thereon as the court deems just as pleaded in paras. 22, 23 and 24 respectively of the amended statement of claim.

[60] In regard to this issue, since it had been established that there was no breach of contract and no tort of unlawful interference committed on the part of PETRONAS, it ought to be answered in the negative.

Second Suit

[61] Moving on to the issues to be tried in the second suit. The first and second plaintiffs' claim in the second suit arises from the decision by PETRONAS to blacklist MKI and the plaintiffs being the board of directors on 6 October 2017.

[62] There are four issues to be determined by this court.

[63] The first issue in the second suit is whether the words complained of in the letter dated 6 October 2017 were defamatory.

[64] The defamatory material complained of by the first and the second plaintiffs in the letter from CPRAC dated 6 October 2017 is as follows:

(a) that MKI Engineering Services (Sarawak) Sdn Bhd is blacklisted effective from the date of this letter;

(b) that the following Directors of MKI Engineering Services (Sarawak) Sdn Bhd is blacklisted effective from the date of this letter:

(i) Mahmud Bin Matusin (590318-13-5195)

(ii) Nazira Binti Mahmud (870916-52-6934)

(iii) Lee Khin San (550808-71-5399)

[65] The Court of Appeal in *Dato' Seri Mohammad Nizar Jamaluddin v. Sistem Televisyen Malaysia Bhd & Anor* [2014] 3 CLJ 560; [2014] 4 MLJ 242 held that:

[12] ... the law is clear in its definition as to what would amount to a defamatory statement. Indeed, in this case the learned trial judge had referred to *Halsbury's Laws of England* (4th Ed) p 7 in order to get a definition of what would constitute a defamatory statement in law. At p 7 of her grounds of judgment she had, when citing *Halsbury's Laws of England*, so stated as follows:

> *A defamatory statement is a statement which tends to lower a person in the estimation of right-thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt, or ridicule, or to convey an imputation on him disparaging or injurious to his office, profession, calling, trade, or business.*

[13] We find nothing wrong with such statement of the applicable legal principle by the learned trial judge on that score.

(emphasis added)

[66] This court was of the opinion that the words complained in the letter from CPRAC dated 6 October 2017 had the tendency to lower the first and second plaintiffs in the second suit in the estimation of right-thinking members of society generally or to cause them to be shunned or avoided.

[67] It had been established that the blacklisting of the plaintiffs carried clear implications, suggesting a lack of integrity and unfitness for work or business requiring a PETRONAS license. Suppliers to the industry, including Boteli Valves Group Co, were informed by PETRONAS of the revocation, along with a directive that if they wished to continue providing their services, they must appoint a new representative in Malaysia.

[68] Further, the first and second plaintiffs in the second suit were indeed barred from participating in the tenders of PETRONAS and petroleum arrangement contractors (PACs).

[69] As such, this first issue in the second suit is answered in affirmative.

[70] The second issue here is whether there was publication of the defamatory material to third parties as alleged.

[71] In regard to the issue, this court found that there was indeed a publication of the impugned letter to third parties. The letter was copied to two other officers in PETRONAS. Further, it was circulated by PETRONAS to the officers of its associated companies and the officers of the petroleum arrangements contractors (PACs). PETRONAS also informed MKI's supplier in respect of the blacklisting of the MKI and the plaintiffs in the second suit.

[72] PW2 in his witness statement marked as WSPW2(1) testified as follows:

Q15: Was the information on the blacklisting of MKI and its directors circulated or passed on to others?

A15: Yes. The notification on blacklisting was copied to two other officers in PETRONAS, namely, Dato' Ja'afar Mahad and En. Wan Yusoff B A Hamid and the information was widely circulated in the oil and gas industry. It was circulated by PETRONAS to the officers of its associated companies and the officers of the Petroleum Arrangements Contractors (PACs) and was also captured in its online system. PETRONAS also informed all its suppliers, including BOTELI and ThinJack Ltd, with whom MKI had dealings with, that MKI and its directors had been blacklisted. In support, I refer to the undisputed evidence listed below:

(a) a Memorandum dated 02.11.2017 from PETRONAS to 48 of its officers and officers of its associated companies, informing them that MKI together with five other companies had been blacklisted and that, pursuant to the blacklisting, these companies were, *inter alia*, not allowed to utilise the PETRONAS license/ registration. See Part B Bundle, pages 151 - 156;

(b) another Memorandum dated 02.11.2017 from PETRONAS to 25 officers of the Petroleum Arrangement Contractors (PACs), which included 21 officers from Petroleum Sharing Contractors (PSCs) and 4 officers from Risk Sharing Contractors (RSCs), informing them of the backlisting. See Part B Bundle, pages 157 - 162;

(c) a report on a search carried out of the online system known as PETRONAS Registration of Supplier (ROS) in regard to the status of MKI which was stated to be "BLACKLISTED", the said information being accessible to other users of the online system. See Part A Bundle, pages 81 - 82;

(d) several letters all dated 18.01.2018 from PETRONAS to the suppliers, including BOTELI, informing them that it was no longer in relationship with MKI "due to revocation of its PETRONAS License" and stating that "it is advisable for your company to appoint a new agent to be your representative in Malaysia". See Part A Bundle, page 293;

[73] The defendant never challenged this part of PW2's evidence during the cross-examination. It is trite that failure to challenge amount to acceptance. The Federal Court in *Wong Swee Chin v. PP* [1980] CLJU 138; [1980] 1 LNS 138; [1981] 1 MLJ 212 held that:

> ... we need only say there is a **general rule that failure to cross examine a witness on a crucial part of the case will amount to an acceptance of the witness's testimony**. But as is common with all general rules there are also exceptions as pointed out in the judgment of the Supreme Court of New Zealand in *Transport Ministry v. Garry* [1973] 1 NZLR 120, 122 where Haslam J said at page 122:

> In *Phipson on Evidence* 11th edition paragraph 1544 the learned authors suggest examples by way of exception to the general principle that failure to cross-examine will amount to an acceptance of the witness's testimony, *viz*, where
>
> ... the story is itself of an incredible or romancing character, or the abstention arises from mere motives of delicacy... or when counsel indicates that he is merely abstaining for convenience, *eg*, to save time. And where several witnesses are called to the same point it is not always necessary to cross-examine them all.
>
> (emphasis added)

[74] Therefore, this issue is answered in the affirmative.

[75] The third issue is whether the publications by PETRONAS were on occasion of qualified privilege and/or were fair comments and/or justified.

[76] On the principle of qualified privilege, the Federal Court in *Dato' Dr Low Bin Tick v. Datuk Chong Tho Chin & Other Appeals* [2017] 8 CLJ 369; [2017] 5 MLJ 413 would come to mind where the court elucidated that:

> [46] Qualified privilege depends on the occasion upon which the communication is made, and not the communication itself. *A qualified privilege occasion is an occasion where the person who makes a communication has an interest or a duty, legal, social or moral to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it*. If the communication were made in pursuance of a duty or on a matter in which there was a common interest in the party making and the party receiving it, the occasion is said to be one of qualified privilege. Whether an occasion is a privileged occasion depends on the circumstances of each case, the nature of the information and the relation of speaker and recipient. It is for the judge alone to determine as a matter of law whether the occasion is privileged (*Adam v. Ward* [1916-17] All ER Rep 157; [1917] AC 309).
>
> (emphasis added)

[77] In another case of *Tan Sri Dr Muhammad Shafee Abdullah v. Tommy Thomas & Ors* [2018] 10 CLJ 222; [2018] 12 MLJ 98, the Court of Appeal held that:

> [77] The defence of qualified privilege accords freedom of communication in certain relationships without the fear of a defamation action. Those relationships encompass situations or circumstances where the person communicating the statement has a legal, moral or social duty to make it and the recipient has a corresponding interest in receiving it. Instances such as communications between teachers and parents, local councillors, officers of companies, employers and employees, or traders and credit agencies, are all relationships that are protected by qualified privilege. **Whether what is communicated is true or not is irrelevant provided that the required relationship exists and that the statement made is not motivated by malice** (see *Adam v. Ward* [1917] AC 309).

A [78] There are basically three tests which we are required to look at and they are the 'duty test', the 'interest test' and the 'circumstantial test' (see *Tort of Defamation K Kuldeep Singh* at p 358).

(emphasis added)

[78] This court found that PETRONAS's action of blacklisting the first and
B second plaintiffs were justifiable and well-founded. The words complained of as defamatory in the said letter were published on an occasion of qualified privilege, were fair comments and justified.

[79] This court was of the opinion that it is part of PETRONAS' responsibility, as industry regulator under PDA 1974 and PR 1974, to
C protect the oil and gas industry in Malaysia. It is imperative for PETRONAS to give priority to the safety of the equipment in the oil and gas industry. PETRONAS had shown that threats against safety are a matter concerning public interest.

[80] As such, PETRONAS' act of notifying the affected principals of MKI
D and PAC including the Boteli Group and ThinJack Ltd on the status of MKI following its blacklisting decision by CPRAC was justified, constituted fair comments and qualified privilege.

[81] This issue is, therefore, answered in the affirmative.

E **[82]** The fourth issue is whether the MKI directors are entitled to claim for damages as prayed.

[83] In light of the above findings, this court is of the view that the first and second plaintiffs in the second suit are not entitled to claim for damages as prayed.
F

[84] This issue is answered in the negative.

[85] Having considered submissions of parties in light of the cause papers and the evidence in this case, this court found that the plaintiff in the first suit had failed to prove its case against the defendant on the balance of
G probabilities.

[86] This court also found that the first and second plaintiffs in the second suit failed to prove their case against the defendant on the balance of probabilities.

H **[87]** In the premises, this court hereby dismissed plaintiff's claim in the first suit with costs in the sum of RM50,000 to the defendant to be paid by the plaintiff subject to allocatur fee.

[88] This court also dismissed the first and second plaintiffs' claim in the second suit with costs in the sum of RM20,000 to the defendant to be paid
I by the first and second plaintiffs subject to allocatur fee.